

## SUBCHAPTER D—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES IN FOREIGN COMMERCE

### PART 571—INTERPRETATIONS AND STATEMENTS OF POLICY

Sec.

571.1 Interpretation of Shipping Act of 1984—Refusal to negotiate with shippers' associations.

571.2 Interpretation of Shipping Act of 1984—Unpaid ocean freight charges.

AUTHORITY: 5 U.S.C. 553, 46 U.S.C. app. 1706, 1707, 1709, and 1716.

#### § 571.1 Interpretation of Shipping Act of 1984—Refusal to negotiate with shippers' associations.

(a) Section 8(c) of the Shipping Act of 1984 (*1984 Act*) authorizes ocean common carriers and conferences to enter into a service contract with a shippers' association, subject to the requirements of the 1984 Act. Section 10(b)(13) of the 1984 Act prohibits carriers from refusing to negotiate with a shippers' association. Section 7(a)(2) of the 1984 Act exempts from the antitrust laws any activity within the scope of that Act, undertaken with a reasonable basis to conclude that it is pursuant to a filed and effective agreement.

(b) The Federal Maritime Commission interprets these provisions to establish that a common carrier or conference may not require a shippers' association to obtain or apply for a Business Review Letter from the Department of Justice prior to or as part of a service contract negotiation process.

[53 FR 43698, Oct. 28, 1988]

#### § 571.2 Interpretation of Shipping Act of 1984—Unpaid ocean freight charges.

Section 10(a)(1) of the Shipping Act of 1984 states that it is unlawful for any person to obtain or attempt to obtain transportation for property at less than the properly applicable rates, by any "unjust or unfair device or means." An essential element of the offense is use of an "unjust or unfair device or means." In the absence of evidence of bad faith or deceit, the Federal Maritime Commission will not infer an "unjust or unfair device or

means" from the failure of a shipper to pay ocean freight. An "unjust or unfair device or means" could be inferred where a shipper, in bad faith, induced the carrier to relinquish its possessory lien on the cargo and to transport the cargo without prepayment by the shipper of the applicable freight charges.

[58 FR 7194, Feb. 5, 1993]

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